IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.04.2008
CORAM:
THE HON□BLE MR. JUSTICE K.CHANDRU
W.P.Nos.1696 of 1995 and 8697 of 1998

M.Indirani ..Petitioner in both WPs

Vs.

1. The State of Tamilnadu,
rep. By the Secretary,
Department of Labour and
Employment, Fort St. George,
Madras 9.

2. The Assistant Commissioner of Labour
(Conciliation I), Office of the Assistant
Commissioner of Labour, J.J.Maligai,
Dr.Balasundaram Chettiar Road,
Coimbatore 18.

..R1 and R2 in W.P.1696/95
3. The Management of Coimbatore Murugan
Mills (now wholly owned by National
Textile Corporation, a Govt. Of India
undertaking)
Post Box No.7004,
Coimbatore 641 043. .R3 in W.P.1696/95 &
respondent in W.P.8697/98
Prayer : PetitionS under Article 226 of the Constitution of India praying for a Writ of Certiorarified mandamus and mandamus respectively to call for the records of the 2nd respondent in connection with the order dated 17.10.94 in reference Na.Ka.No.A/1273/94 and quash the same and direct the 1st respondent to take appropriate action against the 3rd respondent for non-compliance of the award in I.D.No.122 of 1988 pronounced by the Labour Court, Coimbatore and to direct the respondent/Management not to post the petitioner in any other department other than conewinding department for the present.
For Petitioner :: Mr.V.Prakash, Senior Counsel
for Ms.Ramapriya
For Respondents :: Mrs.Narmada Sampath for
Mr.R.Parthiban

O R D E R
Heard both sides. These two writ petitions are filed by a textile worker.

2. In W.P.No.1696 of 1995, the prayer of the petitioner is to quash the proceedings of the 2nd respondent dated 17.10.1994 made in Na.Ka.No.A/1273/94 and direct the 1st respondent to take appropriate action against the 3rd respondent for non-compliance of the award in I.D.No.122 of 1988 pronounced by the Labour Court, Coimbatore.

3. The petitioner who was appointed on compassionate grounds by the respondent/Management on

account of her father's illness. The petitioner was having high qualification namely a post graduate decree as well as type writing qualification. As soon as she joined the work, she was given training in various departments including in Cone Winding department as well as Spinning Quality Control department. The petitioner, on account of her higher qualification, sought for posting in the Spinning Quality Control department. But however, as per the practice in the mills and since there was a waiting list, the petitioner, being the junior most, the respondent mill was not willing to post her in the said department. It is alleged by the respondent/Management that as she was not given a favourable order to work in the Quality Control department, she took leave frequently, it necessitated them to take action against her and accordingly, her services were dispensed with by the Mill.

4. Even as per the admission of the respondent/Management, before her services were dispensed with, she was working only in the Cone Winding department. In the counter affidavit filed on behalf of the 3rd respondent in W.P.No.1696 of 1995, in paragraph 11, it has been stated as follows:- "This itself would show that the petitioner was working only in the worker category in the cone winding department and that she was dismissed because of her unreasonable attitude in seeking appointment as a staff operative in the Spinning Quality Control department".

5. The petitioner raised an industrial dispute before the Labour Court and the Labour Court in I.D.No.122 of 1988 dated 03.04.1992 rejected the case of the worker to get employed in the Quality Control department. But, however, in paragraph 12 of the Award, it was held that the non employment of the petitioner was illegal and she was eligible to get restored to the same work which she had done before her termination together with service continuity and 50% of the back wages.

6. The respondent/Management challenged the said award and the same was confirmed by this Court. Thereafter, the petitioner was restored to duty and instead of being posted in the Cone Winding department, which place she was earlier working, the respondent/Management directed her to work in Packing department. The duties involved in that department was to remove the Cone (yarn in the Cone form) to the packing department to be packed in bags. Even though the direction of the Labour Court was to give her posting only in the same job, the same was not adhered to.

7. In the counter affidavit filed in W.P.No.8697 of 1998, it is stated that each cone weighs approximately 1.25 Kgs and they will have to shift them in bulk from the Cone Winding Department to the Cone Packing Department in trolleys and normally a trolley will contain 50 cones, which approximately will weigh 62 Kgs. It is also stated it is not a mechanised trolley. Since the petitioner was abruptly sent to another department, she filed a complaint before the Assistant Commissioner of Labour, which complaint is dated 21.07.1994. She sought for prosecution of respondent/Management under Section 29 of the Industrial Disputes Act. The Assistant Commissioner of Labour, Coimbatore held that there was no breach of the award in as much as the petitioner was restored to her duty and paid 50% of the wages and also it was stated that since there is considerable doubt about the operative portion of the award, she may approach the Labour Court once again with a petition under Section 36 A of the Industrial Disputes Act for interpreting the award. Aggrieved by that order, W.P.No.1696 of 1995 was filed.

8. Mr.V.Prakash, learned Senior counsel appearing for the workman contended that the action of the Assistant Commissioner of Labour in rejecting the request for prosecuting the Management is illegal and he has no power to pass such an order and once the complaint under Section 29 of the ID Act is made, it is for the appropriate Court to decide whether there was a breach of the award or not and the impugned order dated 17.10.1994 seems to be in advisory nature. Without going into the said contention, it must be stated that for prosecuting a person for violation of the award, Section 34 requires a complaint to be made only by the authority of the appropriate Government and the criminal Courts are precluded from trying any offence in any other way. In the present case, if the

petitioner wanted to prosecute the Management, she ought to have approached the State Government for necessary sanction not to move the conciliation officer, who has no power to grant any order. Further, even if any prosecution is launched, at this distance of time, it will be hit by the limitation provided under the Criminal Procedure Code for trying such an offence. Therefore, there is no useful purpose will be served in entertaining the writ petition and the writ petition No.1696 of 1995 is accordingly dismissed.

9. The petitioner filed the second writ petition being W.P.No.8697 of 1998 for a direction to the Management not to post the petitioner in any other department other than Cone Winding Department for the present.
10. It is to be noted that the award has become final and it is clearly stated in the award that the petitioner will have to be given the same work, which she was doing before the date of her dismissal. Though Ms.Narmada Sampath, learned counsel for the respondent/Management contended that it is the prerogative of the Management to post her in any other place depending upon the exigencies of work and also submitted that Cone Packing Department and Cone Winding Department are within the same department.

11. It is seen from the records that the grievance of the petitioner is that she should be restored to service in the same place where she had worked. Nowhere in the counter affidavit it is stated that the petitioner had worked in the Cone packing department. Further the nature of duties involved in the Cone packing department is manual like pulling and pushing trolleys, with more than 62 Kgs. of cones. It is clear that a female worker, even with another worker's help, will find it difficult to do the work. In any event, in this writ petition, we are not concerned as to the nature of duties involved in the packing section.

12. What is considered is the Labour Court's operative portion of the award which clearly states that she should be restored to duty in the Cone Winding Department. That has not been done. With a view to punish her for having instituted prosecution proceedings against the Management, the respondent Management must have transferred to some other department. But, insofar as the award has become final, it is the bounden duty of the Management to obey the award and to restore the petitioner to the Cone Winding Department, which fact has also been admitted in the counter affidavit already referred to above.

13. Under such circumstances, W.P.No.8697 of 1998 will stand allowed and the petitioner shall be restored to the Cone Winding Department, which department she was working before her dismissal and the said dismissal was also set aside by the Labour Court's Award which was also confirmed by this Court in the proceedings initiated by the Management.

14. In the light of the above, W.P.No.1696 of 1995 will stand dismissed and W.P.No.8697 of 1998 will stand allowed. Considering the higher qualification possessed by the petitioner even before entering into the service, it is for the respondent/Management to utilise her services in an area where she can be more efficient. If she makes any application in this regard, the respondent/Management shall consider her case sympathetically. No costs.

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To

1. The Secretary,
The State of Tamilnadu,
Department of Labour and
Employment, Fort St. George,
Madras 9.

2. The Assistant Commissioner of Labour
(Conciliation I), Office of the Assistant
Commissioner of Labour, J.J.Maligai,
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